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THE BENEFITS PLANNER

KEYS TO EFFECTIVE BENEFITS PLANNING, ASSISTANCE AND OUTREACH

NEW YORK IMPLEMENTS MEDICAID BUY-IN PROGRAM

Program Allows Individuals With Disabilities to Work and Keep Medicaid

Many persons with significant disabilities are unable to obtain employer-funded private health insurance that provides coverage comparable to Medicaid. The fear of losing Medicaid is one of the greatest barriers keeping individuals with disabilities from maximizing their employment, earnings potential, and independence. For many Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) beneficiaries, the risk of losing Medicaid through work activity is an equal or greater work disincentive than the risk of losing cash benefits through work activity.

As we explain below, since 1987 when the section 1619(b) Medicaid provisions became permanent, SSI beneficiaries have been able to keep Medicaid when they lose cash benefits due to wages. No parallel provisions have existed for persons who do not receive SSI, including individuals who receive SSDI without an SSI supplement. Although

SSDI beneficiaries who work are eligible for extended Medicare coverage for eight years or more following a nine-month trial work period, Medicare typically does not provide the scope of coverage available through Medicaid. Medicare, for example, does not pay for prescription drugs and has very restrictive and limited coverage for home health care benefits, two services covered by Medicaid.

Congress created the Medicaid Buy-In option in section 4733 of the Balanced Budget Act of 1997 and enhanced this option through the Ticket to Work and Work Incentives Improvement Act of 1999. By authorizing states to offer Buy-In programs, these landmark pieces of legislation created an opportunity for states to develop comprehensive work incentives that encourage people with disabilities to work or increase their levels of work, thereby reducing or eliminating their dependency on cash benefits.

FOR TECHNICAL ASSISTANCE IN NEW YORK STATE CALL**1-888-224-3272****OR CONTACT US BY EMAIL: nywisc@nls.org**

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New York is now implementing the Medicaid Buy-In program adopted by our state legislature and signed by Governor Pataki on January 16, 2002. The legislation, sections 62-69 of Part A of Chapter 1 of the State Health Workforce Recruitment and Retention Act of 2002, extends Medicaid coverage to working individuals with disabilities who have net incomes at or below 250 percent of the federal poverty level and non-exempt resources at or below \$10,000. Because SSI-related earned income exclusions are used to determine net income in the Buy-In program, this means that an individual could be eligible for the program with annual income as high as \$46,170.

Originally, the legislation was to be implemented by April 1, 2003, but implementation was delayed. Fortunately, as the April 2003 date approached and the community of working individuals with disabilities pressured the state to make implementation a priority, the Governor announced that the legislation would become effective on July 1, 2003, even if no regulations had been published.

On June 9, 2003, the Department of Health issued Administrative Directive (ADM) 03-04, providing local Departments of Social Services interim implementation instructions for the Buy-In program. Although regulations had still not been published as of late June 2003, the state had geared up to begin accepting applications for the program on July 1st.

To provide readers a comprehensive view of where the Buy-In fits in, this article will: explain what Medicaid is and what it covers; provide an explanation of the 1619(b) program for former SSI beneficiaries who can keep Medicaid while working; and explain the spend down program for individuals with income that is higher than Medicaid's eligibility threshold. Finally, this article will discuss the requirements of the Medicaid Buy-In, including who is covered, how one applies, and who makes the eligibility decisions.

WHAT IS MEDICAID?

Medicaid, also known as Medical Assistance, is a publicly funded health insurance program. The federal, state and local governments share Medicaid costs. It is administered at the state level by the State Department of Health. At the local level, the county Departments of Social Services (DSS) administer Medicaid, except in New York City where it is run by the Human Resources Administration (HRA).

Medicaid should be distinguished from Medicare, a federal insurance program most frequently associ-

ated with receipt of Social Security benefits. An SSDI beneficiary qualifies for Medicare after 24 months of eligibility. Medicare Part A, hospital insurance, is automatic and cost free. Part B is optional and subject to a monthly premium (i.e., \$58.70 in 2003). Medicaid can pay the Part B premiums for many individuals who receive both Medicaid and Medicare. Since Medicare has very limited coverage of community-based care, it is not as important as Medicaid to persons with disabilities.

Services Covered By Medicaid

New York's Medicaid program covers more than 40 categories of services. The more important Medicaid services, for persons with disabilities, tend to be those that are most expensive and often not covered by employer-funded insurance plans. These include:

- Inpatient and outpatient hospital care
- Physician's services
- Mental health counseling
- Home health care, including personal care services and private duty nursing
- Physical therapy, occupational therapy, speech and language therapy
- Prescription drugs
- Durable medical equipment

In addition to the services available to all Medicaid beneficiaries in the state, New York provides additional services to special populations under Medicaid Waiver programs. For example, one waiver program for persons with developmental disabilities will fund certain vocational services, including job coaching.

BASIC MEDICAID ELIGIBILITY CONCEPTS

SSI and Welfare Recipients Qualify for Medicaid Automatically

In New York, recipients of SSI and welfare benefits, including Temporary Assistance to Needy Families (TANF) and Safety Net benefits qualify for Medicaid automatically.

Some Former SSI Recipients Continue to Qualify for Automatic Medicaid

Our Fall 2001 issue of the *Benefits Planner* described the conditions under which four separate classes of former SSI recipients can retain automatic Medicaid. This includes individuals eligible under the 1619(b) provisions, discussed below, and three other categories of recipients:

- Individuals who lose SSI when they become eligible for Social Security widows/widowers benefits retain Medicaid during the 24-month waiting period for Medicare.
- Under the Pickle Amendment, individuals become eligible for Medicaid at the future date when they would once again become eligible for SSI if cost-of-living increases in Social Security benefits, since the last month they received SSI and Social Security, are ignored.
- Individuals who lose SSI when they become eligible for Social Security Disabled Adult (DAC) Child's benefits or an increase in those benefits retain automatic Medicaid if they would be eligible for SSI by ignoring the DAC benefits or most recent DAC increase.

All Others Must Submit an Application

Persons who do not receive SSI or welfare benefits, including SSDI beneficiaries, must apply for Medicaid through the local DSS or HRA. Persons with disabilities must satisfy both the categorical (i.e., disability) and financial eligibility requirements.

SECTION 1619(B) – CONTINUED MEDICAID FOLLOWING A LOSS OF SSI DUE TO WAGES

The section 1619(b) program is a powerful work incentive. A permanent part of the SSI program since 1987, this provision allows individuals, in most cases, to retain Medicaid when they lose SSI due to increased wages.

If an SSI beneficiary works, the first \$65 of wages each month is not counted (or \$85 if there is no unearned income). The SSI check is then reduced by \$1 for every additional \$2 of gross monthly wages. For a person who lives alone, SSI eligibility will cease if they earn \$1,363 or more per month in 2003. This is because countable income, at this rate of pay, would be equal to the SSI living alone rate of \$639 per month.

Section 1619(b) allows automatic Medicaid to continue if a person loses SSI due to wages. If the person is still disabled and would be eligible for SSI if the wages were not counted, Medicaid should continue. In New York, the 2003 income limit is \$34,136 in wages per year. The income limit can be higher if medical expenses are high enough.

Two examples show how section 1619(b) could work. Cynthia suffered a back injury on the job. She resides with her two young children and receives \$520 in SSDI benefits and \$75 in SSI benefits.

What if she goes to work part time and earns \$365 per month in gross wages? She will lose SSI benefits. This is because \$500 of her SSDI and \$150 of her wages will be counted against the living with others SSI rate of \$575. Under these facts, Cynthia should be able to continue Medicaid through 1619(b). This is because she lost her SSI due to wages.

What if Cynthia's earnings increase to \$885 per month? She would probably lose her SSDI if she has already exhausted her trial work period (see the Summer 2001 issue of the *Benefits Planner*). If she loses her SSDI, the 1619(b) rules will allow her to once again qualify for SSI benefits of \$175 per month, based on SSI's formula for counting earned income ($\$885 - 20 - 65 = 800 \div 2 = \400 ; $\$575 - 400 = \175 SSI payment). Until she loses her SSDI benefits, she will continue to be ineligible for SSI, but will be eligible for 1619(b) Medicaid.

William, an SSI beneficiary who is spinal cord injured, goes to work and earns \$36,000 per year. He loses SSI benefits and his annual wages are more than the 1619(b) income threshold of \$34,136. He can keep Medicaid under 1619(b) if his Medicaid costs are high enough. If we assume Medicaid would pay \$25,000 per year for medical expenses (most of this would be for home health care), that amount would be added to a "base amount" of \$16,356 and William's "individualized" 1619(b) threshold for 2003 would be \$41,356. Since his \$36,000 salary is below that figure, William remains eligible for Medicaid.

CONTACT INFORMATION FOR BENEFITS PLANNING, ASSISTANCE AND OUTREACH SERVICES

In each region of the state, a project is available to assist SSI and SSDI recipients who need to understand how working will affect their benefits (including Medicaid or Medicare). The Benefits Planning, Assistance and Outreach (BPA&O) project for your region will also help recipients understand how they can use any of the special work incentives available to them. For BPA&O contact information in your region of the state, call the State Work Incentives Support Center, toll free, at 1-888-224-3272.

To remain 1619(b) eligible, the individual's resources must stay within SSI limits. This means an individual's non-exempt assets cannot exceed \$2,000. This would limit the person's ability to save for a house, for a car, for a child's education, or for retirement.

Unearned income must also be within SSI limits to retain 1619(b) eligibility. If either Cheryl or William, in the examples above, were to get married, they could cease to be eligible for 1619(b) Medicaid if the spouse's income is high enough. This is because the income of a spouse, which is deemed available to the other spouse, is considered the unearned income of that other spouse. For example, based on 2003 SSI rates, Cheryl or William would cease to be eligible for 1619(b) Medicaid if the spouse's gross earned income is \$1,835 per month or higher.

Section 1619(b) has a major limitation – it is only available to individuals who have received an SSI check in the past! This makes the Medicaid Buy-In an important, additional work incentive.

THE MEDICALLY NEEDY OR SPEND DOWN PROGRAM

If a person is not eligible for SSI or welfare benefits (or eligible for continued Medicaid as a former SSI recipient under one of the special rules discussed above), he or she must apply separately for Medicaid. A single individual with a disability will be eligible, under 2003 rules, if countable income is no more than \$642 per month and resources no more than \$3,850. If income is more than \$642 the individual will qualify only with a spend down.

BACK ISSUES OF THE BENEFITS PLANNER AVAILABLE

Many of the issues discussed in the lead article are covered in more detail in back issues of the *Benefits Planner*. These include lead articles on SSDI work incentives, Medicaid eligibility, SSI's income and resource rules, and the Plan for Achieving Self Support (PASS). Hard copies can be obtained by calling the State Work Incentives Support Center at 1-888-224-3272 or go to the Neighborhood Legal Services website at: www.nls.org/tocplanr.htm.

Income Disregards for Persons Who are Working

Medicaid's rules for disregarding income are nearly identical to SSI's rules. The first \$20 of unearned income is disregarded. The following amounts are disregarded from earned income: the first \$65 (or \$85 if there is no unearned income); impairment related work expenses; one half of remaining earned income; blind work expenses, for persons who are legally blind; up to \$1,340 per calendar month, but not more than \$5,410 per year for a full-time student under age 22; and any income set aside in a Plan for Achieving Self Support (PASS). [For a listing of all income disregards, see 18 N.Y.C.R.R. § 360-4.6(a).]

Consider June, who is deaf and receives \$712 in SSDI benefits. She earns too much to qualify for SSI. After a \$20 deduction, it is also \$50 more than the \$642 income limit for Medicaid, meaning June will have a \$50 per month Medicaid spend down. June goes to work and earns \$465 gross per month. The Medicaid program will disregard the first \$65 which June earns and disregard an additional 50 percent, leaving her with \$200 in countable wages ($\$465 - 65 = 400 \div 2 = \200). Her countable income is now \$875 per month (\$692 unearned + \$200 earned), making her spend down \$250 per month. Thus, as her income went up by \$465, her spend down increased by \$200. June's countable income could be reduced further if she were to put all or part of this \$250 into an approved PASS (see immediately below).

Medicaid's Plan for Achieving Self Support

The PASS is best known as an SSI work incentive. It allows a person to take income or resources that would be counted by SSI and exclude the money by using it to help the person achieve a vocational goal. SSI's PASS has, for example, been used to take SSDI benefits or wages and use the money for items like tuition, computer equipment, or a vehicle. When the PASS is approved, the person qualifies for SSI without counting the excluded income. [See the Summer 2002 issue of the *Benefits Planner*.]

A PASS can also be used to exclude income or resources that would be counted by Medicaid. 18 N.Y.C.R.R. § 360-4.6 (a) (2) (xxiii). For example, consider Mary who is spinal cord injured. She receives \$1012 in SSDI benefits each month. After the first \$20 of her SSDI is excluded, Mary's monthly income is \$350 above the one-person Medicaid limit of \$642.

Mary proposes to set aside \$250 per month (\$3,000 per year) in a PASS to save toward the purchase of a modified van and a laptop computer to pursue a career in accounting. If approved by Medicaid, Mary's countable income is reduced from \$992 to \$742 and her spend down is reduced from \$350 to \$100 per month. If Mary sets aside \$350 in an approved PASS her spend down will be eliminated. Mary can also reduce her countable resources below the \$3,850 limit by designating part of her savings toward PASS expenses.

A PASS can fund a wide range of items, including child care, equipment or supplies to start a business (including a business operated from the home), and modifications to vehicles or buildings to allow use by a the person with a disability. So long as the cost is connected to the long-term vocational goal, it should be allowed under Medicaid's PASS.

THE NEED FOR A MEDICAID BUY-IN PROGRAM

As already noted, the section 1619(b) program is only available to persons who have received SSI in the past. For persons with disabilities eligible for Medicaid only through the medically needy program, as their wages increase their spend down obligation may increase to a level that makes continued work unrealistic. In fact, if wages remain above the substantial gainful activity level (\$800 in 2003), Medicaid will no longer be available with a spend down because the individual would not meet the SSI definition of disability.

NEW YORK'S MEDICAID BUY-IN PROGRAM

New York just became the 27th state to implement a Buy-In program. New York's program is quite unique as it will establish two eligibility groups: the Basic Coverage Group and the Medical Improvement Group.

The Basic Coverage Group

To be eligible for the Basic Coverage Group, an individual must have a disability that meets the medical criteria established for the SSI program, but have too much income to qualify for SSI. In addition to the usual Medicaid rules, the specific requirements are:

- **Disability** - Certified disabled under SSI criteria
- **No SGA test** - In determining disability, there is no "substantial gainful activity" (SGA) test

TWO-DAY CONFERENCE PLANNED IN HERKIMER

One of the important services of our State Work Incentives Support Center is the two-day Leadership Institutes or conferences we have sponsored during the past three years. Our next conference will be held at Herkimer County Community College on September 24-25, 2003 (see the insert for details and registration information). The new Medicaid Buy-In will be one of the sessions offered during the conference.

(i.e., earnings over \$800 per month in 2003 are irrelevant)

- **Age** - Be at least 16 but not yet 65 years old
- **Work** - Be engaged in paid work (includes part-time and full-time work)
- **Income** - Have a gross income that may be as high as \$46,170 for an individual and \$61,870 for a couple (as of January 1, 2003)
- **Resources** - Have non-exempt resources that do not exceed \$10,000

The Medical Improvement Group

To be eligible for the Medical Improvement Group, an individual must meet all the criteria met by individuals in the Basic Coverage Group. Additionally, the individual must be in receipt of coverage through the basic group, no longer disabled under the SSI criteria but continuing to have a severe medically determined impairment. Keep in mind that loss of eligibility under the Basic Coverage Group must be the direct and specific result of loss of disability status because of medical improvement. Finally, an individual in the Medical Improvement Group must be employed at least 40 hours per month and earn at least the federally required minimum wage.

We do not expect to see many participants in the Medical Improvement Group due to the requirement that a recipient be a participant in the Basic Coverage Group prior to being eligible for the Medical Improvement Group.

How the Premium Works

For both groups, individuals with net income below 150 percent of the federal poverty level (FPL) will not need to pay a premium. Individuals with a net income above 150 percent of the FPL but below

250 percent of the FPL will have a premium calculated as follows: 3 percent of net earned income plus 7.5 percent of net unearned income.

Luckily, for an individual who qualifies for the Medicaid Buy-In program now, a moratorium on premium payments has been instituted until such time as systems support for automated premium collection and tracking is available. The Department of Health estimates that the implementation date for collection of premiums will be in the Spring 2004. Individuals who are then found eligible for the program but with a premium will be assessed a premium prospectively.

The Application Process

Individuals must apply for the Medicaid Buy-In program at their local Department of Social Services (DSS) by completing the form all applicants for public assistance complete, Form 2921, "Application for Public Assistance/Medical Assistance/Food Stamps/Services." In addition, the local DSS must conduct a face-to-face interview to ensure that the applicant meets the basic program requirements.

In those cases in which the individual has not been previously certified disabled, the local DSS must assist the applicant in establishing proof of disability by having the individual sign the appropriate consent forms for release of medical information and by sending requests for medical information to all relevant medical providers.

In all cases, the local DSS must provide information to the applicant about the Plan for Achieving Self Support (PASS) and Impairment Related Work Expenses (IRWE). The authors are hopeful that the Department of Health will train local Medicaid caseworkers concerning the PASS, IRWEs, and other SSI-related work incentive provisions, as these special rules have long been overlooked in the Medicaid program.

Applicants with an income that is below 150 percent of the federal poverty level are eligible to participate in a managed care plan through the Medicaid Buy-In program. All other applicants are excluded from the managed care option. Individuals cannot be required to enroll in managed care even in counties with mandatory participation in managed care.

Local DSS agencies must send application packages - consisting of copies of the application, all required documentation for eligibility and consent for release of medical information forms and requests for medical records - to the Medicaid Buy-In Coordinator at the Department of Health's Albany Central

Office for processing. According to the ADM, local DSS agencies must forward application packages to the Albany Central Office for processing, within 10 days of the application, even if it does not contain all the required documentation.

If the application for the Buy-In program is granted, the recipient will be entitled to up to three months of retroactive eligibility. Recipients found eligible prior to October 1, 2003 will be eligible for retroactive eligibility to July 1, 2003 only.

Grace Periods

A major question asked by individuals awaiting news implementing the Medicaid Buy-In program is what happens to a participant if he or she stops working while participating in the program. According to the ADM, recipients may be granted a grace period if the individual is not working but remains eligible for the program. A grace period can be for up to six months in a 12-month period. Multiple grace periods may be granted as long as the sum of the grace periods does not exceed six months in a 12-month period. Two types of grace periods may be granted.

Change in Medical Condition. A grace period of up to six months will be allowed if, for medical reasons, the recipient is unable to continue working. Medical verification will be required.

Job Loss (through no fault of participant). A grace period of up to six months will be allowed if, through no fault of the recipient, job loss occurs (lay-off, etc.). The local DSS must verify that the recipient is reasonably expected to return to work as it is a

WHEN TO CALL OUR TOLL-FREE LINE FOR TECHNICAL ASSISTANCE

Our State Work Incentives Support Center offers a statewide, toll-free number to call for information and technical assistance on a wide range of issues involving benefits and work. The staff of Neighborhood Legal Services is available to take calls concerning any of the topics you see discussed in these newsletters. For example, if a caller seeks information about any of the information discussed in this article, you can call us at 1-888-224-3272 for more information on these issues.

temporary layoff, or that the recipient is actively seeking new employment.

The local DSS will be responsible for grace period determinations.

Miscellaneous Details, Next Steps

For mixed households, only the applicant for the Buy-In program will be eligible for participation in the program. For mixed households, only the application of the individual, seeking assistance from the program, will be processed by the Albany Central Office. Normal Medicaid eligibility for the rest of the household will be determined by the local DSS. For an existing mixed household, the local DSS will coordinate with the Albany Central Office to set up a separate case.

According to the ADM, an additional administrative directive will be issued at a later date to explain the automated premium payment system as well as

the transition of the Medicaid Buy-In program to the local DSS agencies from the Albany Central Office. In addition, New York City, and its Human Resources Agency, will have its own case processing instructions for the Buy-In program. Stay tuned to this newsletter for details.

CONCLUSION

The Medicaid Buy-In program promises to address the health care needs of many New Yorkers who want to work despite severe disabilities. Combined with the continued availability of section 1619(b) Medicaid, there should now be a means for ensuring continued Medicaid eligibility for nearly all individuals with disabilities who hope to work for significant wages. Readers of this newsletter can play a major role in helping to get out the word about this new work incentive.

THE TECHNICAL ASSISTANCE CORNER

Question: *I am single, 53 years old, have a mental illness, and receive \$762 in Social Security Disability Insurance benefits (my only source of income). Medicaid pays for my psychiatrist, mental health counselor, and two different medications. If I had to pay out-of-pocket for these services, they would cost me \$1,200 to \$1,300 per month. Currently, I pay a \$100 per month spend down to keep Medicaid. If I took a job paying \$765 gross per month, what would happen to my spend down? Might I be eligible for the Medicaid Buy-In? Would the Buy-In still cover me if my wages increased to \$1,500 per month?*

Answer: Based on these facts, Medicaid's spend down program would disregard the first \$65 and half your remaining wages, leaving you with \$350 of additional countable income per month ($\$765 - 65 = 700 \div 2 = 350$). This means your spend down would increase by \$350 per month. After payroll taxes, transportation costs, and other work-related expenses, this might not leave you much gain from your work efforts. Also, if your wages do go above \$800 per month in 2003, you stand to lose your right to a spend down because you would not be considered disabled.

It appears that you would be eligible for the Medicaid Buy-In, as you meet the tests for disability, age, work, and income. Your countable, or non-exempt resources would have to be under \$10,000, considerably more than the \$3,850 allowed by the spend down program. As a single individual, you would be eligible for the Buy-In with a premium at income levels up to \$46,170 per year (i.e., 250 percent of the federal poverty level after SSI-related exclusions), based on information provided by the State Department of Health. At annual earned income levels up to about \$28,000 (i.e., 150 percent of the federal poverty level), you would pay no premiums. So, even based on the higher, \$1,500 per month in wages, you would not have to pay a premium, if that were your only source of income. If you also retained the \$762 in SSDI, you would probably face a monthly premium when the program starts collecting premium payments in early 2004.

If you plan to go to work and consider using the Buy-In, it would be in your best interest to consult the Benefits Planning, Assistance and Outreach (BPA&O) program for your part of the state. A benefits specialist from the BPA&O can analyze all the eligibility criteria for the Medicaid Buy-In, as well as how work would affect your other benefits and any other work incentives that might be available. Call our toll-free technical assistance line at 1-888-224-3272 for the number of the BPA&O program nearest to you.

The NY State Work Incentives Support Center will provide statewide services, including: training through traditional means and through use of the latest technology for distance learning; a toll-free technical assistance line, 1-888-224-3272 (English and Spanish); and a quarterly newsletter, *The Benefits Planner*. To subscribe to the Center's listserv, send your name and email address to tpg3@cornell.edu. To request a print copy of this newsletter, contact the toll-free number above.



In Our Upcoming Issues ...

◆ Medicaid Buy-In: Part II

- When Additional Policies are Published
- Will Use Several Case Examples

If you have special needs and would like *The Benefits Planner* sent in a special format, would like our Spanish version or would like the newsletter delivered by email, please call our toll-free technical assistance line, 1-888-224-3272.

Welcome to *The Benefits Planner*, a Quarterly Newsletter of The NY State Work Incentives Support Center

This newsletter will provide valuable information on how work for persons with disabilities affects government benefits, with an emphasis on the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) work incentives. Each newsletter will contribute to an ongoing dialogue on topics related to benefits and work. Back issues will appear on the Cornell University website, www.ilr.cornell.edu/ped and on the Social Security section of the Neighborhood Legal Services website, www.nls.org.

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